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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,618	09/25/2001	Martin Keller	3245-799 PUS	5959
7590	07/14/2004		EXAMINER	
Thomas C Pontani Cohen Pontani Lieberman & Pavane 551 Fifth Avenue Suite 1210 New York, NY 10176			FERGUSON, KEITH	
			ART UNIT	PAPER NUMBER
			2683	10
			DATE MAILED: 07/14/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/787,618	KELLER ET AL.
Examiner	Art Unit	
Keith T. Ferguson	2683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 September 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 15-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 15-17, 19-22, 25-27 and 29 is/are rejected.
- 7) Claim(s) 18, 23, 24 and 28 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Specification***

1. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b) (4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

***Claim Objections***

2. Claim 18 is objected to because of the following informalities: Claim 18, line 3, recites the phrase "the disturbance" it should recite "a disturbance". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Slekys et al..

The claimed invention reads on Slekys et al. as follows:

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Regarding claims 21 and 22, Slekys et al. discloses a method (fig. 3) for planning a mobile radio network (col. 2 lines 7-65), comprising selecting at least one physical channel having a different wanted-to-unwanted signal ratio (i.e. a signal radio frequency power levels from substantial zero power to a non zero power level indicative to the presence of voice transmission) for a data channel than for a voice channel (col. 2 lines 24-54).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 15,16,17,25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slekys et al. in view of Joel, Jr..

Regarding claim 15, Slekys et al. discloses a method (fig. 3) for allocating a channel requested for a telecommunication link via a telecommunication network (col. 2 lines 15-24): the method comprising the steps of: selecting at least one physical channel having a different wanted-to-unwanted signal ratio (i.e. a signal radio frequency power levels from substantial zero power to a non zero power level indicative to the presence of voice transmission) when a data channel is requested than when a voice channel is requested (col. 2 lines 33-54); and allocating a physical channel for an air interface in a mobile radio network

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(col. 2 lines 40-65). Slekys et al. differs from claim 1 of the present invention in that it does not disclose allocating a channel between a caller and a called party. Joel, Jr. teaches cell center which connect a mobile station to an assign landline to a called station (col. 3 line 67 through col. 4 line 17). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Slekys et al. with allocating a channel between a caller and a called party in order for the mobile station to be presented with a data channel to send a text message to a distant call party, as taught by Joel, Jr..

Regarding claims 16 and 26, Slekys et al. discloses (preferentially) selecting when a data channel is requested, at least one physical channel having a better wanted-to-unwanted signal ratio than when a voice channel is requested (col. 2 lines 33-54).

Regarding claims 17 and 27, Slekys et al. discloses allocating a number of physical channels to one data channel (col. 2 lines 48-54).

Regarding claim 25, Slekys et al. discloses a mobile radio telecommunication network (fig. 1), comprising a plurality of adjoining mobile radio cells (fig. 1 number 18) having channel allocation devices (fig. 1 numbers 16 and 36) for allocating requested channels to at least one of a caller (col. 2 lines 15-54), the channel allocation devices being operative so that at least one physical channel having a different wanted-to-unwanted signal ratio (i.e. a signal radio frequency power levels from substantial zero power to a non zero power level indicative to the presence of voice transmission) is selected when a data channel is requested than when a voice channel is requested (col. 2 lines 15-54), the allocation of a physical channel being effected for an air interface in a mobile radio network (col. 2 lines 15-54). Slekys et al. differs from claim 25 of present invention in that it does not disclose allocating a channel between a caller and a called party. Joel, Jr. teaches cell center which connect a mobile station to an assign landline to a called station (col. 3 line 67 through col. 4 line 17). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Slekys et al. with allocating a channel between a caller and a called party in order for the mobile station to be presented with a data

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channel to send a text message to a distant call party, as taught by Joel, Jr..

7. Claims 19 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slekys et al. in view of Joel, Jr. as applied to claims 15 and 25 above and in further view of Davidson et al..

Regarding claims 19 and 29, the combination of Slekys et al. and Joel, Jr. differs from claim 20 of the present invention in that they do not discloses wherein the data channel is a duplex channel connected between the caller and the called party. Davidson et al. teaches a data channel is a duplex channel connected between the caller and the called party (col. 3 lines 35-52 and col. 5 lines 20-26). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Slekys et al. and Joel, Jr. with wherein the data channel is a duplex channel connected between the caller and the called party in order to have a two data text message transmission between the remote units, as taught by Davidson et al..

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slekys et al. in view of Joel, Jr. as applied to claim 15 above and in further view of Malmstrom.

Regarding claim 20, the combination of Slekys et al. and Joel, Jr. differs from claim 20 of the present invention in that they do not discloses a packet-switching data transmission between the caller and the called party. Malmstrom teaches packet-switching data transmission when a caller dials a subscriber telephone number (col. 5 lines 4-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Slekys et al. and Joel, Jr. with a packet-switching data transmission between the caller and the called party in order to send a text message from the remote unit to a distant remote unit, as taught by Malmstrom.

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***Allowable Subject Matter***

9. Claims 18,23,24 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 18, the prior art of record fail to teach or suggest, alone or in combination **wherein the better wanted-to-unwanted signal ratio of a data channel compared with a voice channel is achieved by allocating, in a mobile radio cell, at least one physical channel in each case to a data channel the disturbance of which by physical channels of at least one of identical and adjacent frequencies in adjacent radio cells is less than in the case of other physical channels.**

Regarding claim 23, the prior art of record fail to teach or suggest, alone or in combination **achieving the better wanted-to-unwanted signal ratio of a data channel compared with a voice channel by allocating in a mobile radio cell in each case at least one physical channel to a data channel having disturbance by physical channels of the same and/or adjacent frequencies in adjacent radio cells that is less than in other physical channels.**

Regarding claim 24, the prior art of record fail to teach or suggest, alone or in combination **achieving the different wanted-to-unwanted signal ratio of a data channel compared with a voice channel by allocating in a mobile radio cell in each case at least one physical channel to a data channel having disturbance by physical channels of the same and/or adjacent frequencies in adjacent radio cells that is less than in other physical channels.**

Regarding claim 28, the prior art of record fail to teach or suggest, alone or in combination **wherein the allocation devices are operative to select the better wanted-to-unwanted signal ratio of a data channel compared with a voice channel by allocating in a mobile radio cell in each case at least one**

physical channel to a data channel, the disturbance of which by physical channels of at least one of identical and adjacent frequencies in adjacent radio cells is less than in other physical channels.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith T. Ferguson whose telephone number is (703) 305-4888. The examiner can normally be reached on 6:30am-5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on (703) 308-5318. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Keith Ferguson  
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July 9, 2004

KHJ